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August 17, 2006

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Marlene H. Dortch, Secretary
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Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

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Re: WC Docket No. 06-159; Neutral Tandem Motion for Interim Order to Preserve the *Status Quo* and Affidavit of Surendra Saboo

Boston
Hartford
London
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New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

Dear Ms. Dortch:

On behalf of Neutral Tandem, Inc. ("Neutral Tandem"), enclosed please find an original and four (4) copies of Neutral Tandem's Motion for Interim Order to Preserve the *Status Quo* and accompanying Affidavit of Surendra Saboo for filing in the above-referenced Commission docket.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please do not hesitate to contact us if you have any questions regarding this Motion or Affidavit.

Respectfully submitted,



Russell M. Blau
Jeffrey R. Strenkowski

Counsel for Neutral Tandem, Inc.

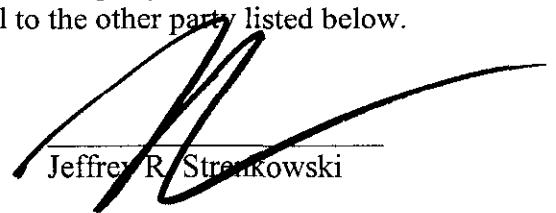
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cc: Service List
Michelle Carey (FCC)
Thomas Navin (FCC)
Victoria Goldberg (FCC)

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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of August, 2006, an original and four copies of Neutral Tandem's Motion for Interim Order to Preserve the *Status Quo* and accompanying Affidavit of Surendra Saboo were filed with the Federal Communications Commission. A copy of the Motion was hand delivered to the party listed below with an asterisk (*), and sent via postage prepaid, first-class mail to the other party listed below.



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Petition of Neutral Tandem, Inc.)	
for Interconnection with Verizon)	WC Docket No. 06-159
Wireless, Inc. Pursuant to Sections)	
201(a) and 332(c)(1)(B) of the)	
Communications Act of 1934, as Amended)	
_____)	

MOTION FOR INTERIM ORDER TO PRESERVE THE *STATUS QUO*

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Dated: August 17, 2006

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SUMMARY

Neutral Tandem requests that the Commission issue an interim order to preserve the *status quo* between Neutral Tandem and Verizon Wireless pending the resolution of the dispute between these two companies in the above-referenced matter. The Commission should order Verizon Wireless not to disconnect any existing direct interconnection trunks carrying terminating traffic from Neutral Tandem to Verizon Wireless, provided that Neutral Tandem continues to maintain these trunks at its sole expense, and that Verizon Wireless will not be required to permit installation of any new trunks pending a final order in this docket.

Neutral Tandem respectfully submits that it has satisfied all four factors that are required for the Commission to grant interim relief. In its Petition for Interconnection filed in this proceeding, Neutral Tandem demonstrated that it will likely prevail on the merits. Failure to grant the motion requested would result in irreparable injury to Neutral Tandem and substantial harm to its carrier customers and their end user customers. It would cause blockage of traffic, damage the development of the only competitive tandem service provider, and cause significant inconvenience to users of the public switched telephone network. Grant of the motion will not result in any harm to Verizon Wireless. Lastly, preservation of the *status quo* would serve the public interest for the reasons already stated.

As such, Neutral Tandem respectfully requests that the Commission issue an interim order requiring Verizon Wireless to maintain the *status quo* concerning the already-established direct connections in Chicago, Detroit, and New York City, pending the ultimate resolution of Neutral Tandem's Petition for Interconnection in the above-reference matter.

**Before the
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Washington, DC 20554**

In the Matter of:)	
)	
Petition of Neutral Tandem, Inc.)	
for Interconnection with Verizon)	WC Docket No. 06-159
Wireless, Inc. Pursuant to Sections)	
201(a) and 332(c)(1)(B) of the)	
Communications Act of 1934, as Amended)	
_____)	

MOTION FOR INTERIM ORDER TO PRESERVE THE *STATUS QUO*

Neutral Tandem, Inc. ("Neutral Tandem"), by its undersigned counsel and pursuant to Sections 1, 4(i), 4(j), 201(a), and 303(r) of the Communications Act of 1934 as amended (the "Act"), and Section 1.45(d) of the Commission's Rules, hereby respectfully requests that the Commission issue an interim order to preserve the *status quo* between Neutral Tandem and Verizon Wireless pending the resolution of the dispute between these two companies in the above-referenced matter. In support of this Motion, Neutral Tandem contemporaneously provides herewith an Declaration of Surendra Saboo ("Saboo Declaration").

On August 2, 2006, Neutral Tandem petitioned the Commission to order Verizon Wireless to establish direct physical connections and through routes with Neutral Tandem, pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the "Petition for Interconnection"). That Petition for Interconnection and this Motion arise from an ongoing dispute between Neutral Tandem and Verizon Wireless concerning direct connections between the two Parties.

BACKGROUND

As noted in the Petition for Interconnection filed by Neutral Tandem in the above-referenced matter, as an integral part of providing intercarrier transit and tandem switched services, Neutral Tandem establishes direct trunk connections, typically at DS3 or multiple DS3 capacities, between its customers and the carriers to whom they wish to terminate traffic. Neutral Tandem's dispute with Verizon Wireless grows out of Verizon Wireless' refusal to permit Neutral Tandem to install direct connections to Verizon Wireless switches in numerous areas of the country. As described in the Petition, Verizon Wireless and Neutral Tandem signed a two-year Master Service Agreement ("MSA"), effective August 18, 2004, that permitted Neutral Tandem to establish terminating trunk connections to Verizon Wireless switches upon request. Although Verizon Wireless ultimately breached its obligation to permit such connections in many instances, it did initially permit direct connections to some of its switches, which Neutral Tandem installed and is currently using to deliver its customers' local and access traffic to Verizon Wireless for termination in Chicago, Detroit, and New York City.

On or about July 17, 2006, Verizon Wireless notified Neutral Tandem that it was terminating the MSA, and directed Neutral Tandem to disconnect existing trunk circuits in Chicago, Detroit, and New York City within 90 days after termination. On August 3, 2006, Neutral Tandem requested that Verizon Wireless voluntarily agree to a standstill arrangement with respect to the interconnected switches during the time that Neutral Tandem's Petition for Interconnection is pending before the Commission. Neutral Tandem proposed that Verizon Wireless agree to maintain existing circuits as they existed prior to termination of the contract, but that Verizon Wireless *not* be obligated to install any additional trunks as an interim matter. In correspondence dated August 14, 2006, Verizon Wireless refused Neutral Tandem's request for a

standstill arrangement and reiterated its demand that Neutral Tandem disconnect existing trunks within 90 days.

LEGAL ARGUMENT

The Commission uses a four factor test when making a determination as to whether to issue an order for interim relief to preserve the *status quo*. To obtain such an order, the moving party must demonstrate that: (1) the underlying petition (the Petition for Interconnection) is likely to succeed on the merits; (2) the moving party would suffer irreparable injury absent the order; (3) the order would not substantially harm other interested parties; and (4) the order would serve the public interest.¹ The moving party must meet each of these tests to obtain relief.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

As noted above, the moving party must first demonstrate that the underlying petition is likely to succeed on the merits. In this regard, the Petition for Interconnection filed by Neutral Telecom is not only likely to succeed on the merits, it is highly probable that the Commission will grant the petition.

As explained in the Petition for Interconnection, the physical interconnection and direct trunk through routes to Verizon Wireless sought by Neutral Telecom will serve the public interest because they will provide an independent route for termination of traffic and will add redundancy to Verizon Wireless's network, as well as the public switched telephone network ("PSTN") at large. In addition, direct connection will help relieve tandem exhaust and provide carrier customers with a choice of service, resulting in competition of price, quality and service

¹ See *Virginia Petroleum Jobbers v. Federal Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958); *AT&T Corp. v. Ameritech Corporation*, 13 FCC Rcd. 14508, 14515-16, at paras. 13-14 (1998) (issuing a standstill order after considering each of the four factors named above); *Time Warner Cable*, MB Docket No. 06-151, Order, DA 06-1587, rel. August 3, 2006 (after weighing the four factors, issuing interim relief based primarily on irreparable harm to petitioner).

features. Carrier customers will thus be able to provide more choices of service and better service at lower costs to end user customers.

The Petition for Interconnection explains why the request is consistent with Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(a), 332(c)(1)(B), discusses the Commission's authority to provide relief pursuant to Section 201(a), and cites to years of Commission precedent finding that the public interest is served by unrestricted interconnectivity among telecommunications carriers, including with commercial mobile radio service ("CMRS") carriers. The Petition for Interconnection also discusses why Verizon Wireless's refusal of direct connection is suspect and subject to special scrutiny: First, because the refusal results in a loss to Verizon Wireless of operational and economic advantages, and second, the refusal benefits Verizon Wireless's parent incumbent local exchange carrier ("ILEC")—Verizon. In particular, Neutral Telecom explained that Verizon Wireless's refusal forces higher costs on Verizon Wireless's CMRS competitors at the same time it benefits the ILEC Verizon.

II. IRREPARABLE INJURY TO NEUTRAL TANDEM, ITS CUSTOMERS, AND THE PSTN

Under the second prong of the test, failure to maintain the *status quo* between the Parties pending the resolution of the Petition for Interconnection will cause irreparable injury to Neutral Tandem, to its customers, and to the PSTN at large. The disruption of the successfully operating direct connections already in place between Neutral Tandem and Verizon Wireless will have the effect of blocking traffic terminating with Verizon Wireless. As these connections go down, there will be no opportunity for traffic to route over Neutral Tandem's connection to reach Verizon Wireless customers and there is no assurance of the availability of capacity in the serving ILEC tandems for Neutral Tandem or its numerous carrier customers to compensate for

this lost capacity.² Approximately 20 carriers who are customers of Neutral Tandem will be affected by the disruption of Neutral Tandem's direct connections with Verizon Wireless in Chicago. Approximately 15 customers will be affected in Detroit, and approximately 10 customers will be affected in New York. These disruptions account for approximately 60 million minutes of traffic terminated by these carriers to Verizon Wireless customers per month in Chicago, Detroit, and New York City collectively.³ Such blocking would have the effect of disrupting the communications of the PSTN, including all carriers using Neutral Tandem to terminate traffic to Verizon Wireless. In fact, Regional Bell Operating Companies ("RBOCs") have reported tandem exhaust in some of the tandem locations at issue, which would only be exacerbated by the removal of Neutral Tandem's connections in these markets.⁴ Further, Neutral Tandem's customers will need time to re-arrange their network routing in order to adjust for the loss of these connections. This will cause these customers, as well as Neutral Tandem, significant time and resources.⁵ In some areas, it may take up to 24 months to obtain replacement trunk capacity from the RBOCs.⁶

Moreover, this development threatens to harm the development of the only viable tandem competitor in the United States: Neutral Tandem. Tandem competition exerts downward pressure on transit and access charges and improved service while leveling the playing field between the ILECs and all of their competitors, both wireline and wireless. As noted by the Commission as

² See Saboo Declaration, ¶ 27.

³ See Saboo Declaration, ¶¶ 19-24.

⁴ See Saboo Declaration, ¶¶ 27-30, 35.

⁵ See Saboo Declaration, ¶ 31.

⁶ *Id.*, ¶ 31.

early as 1994, tandem competition reduces the barriers to competition in the switched access service market. Specifically, the *Tandem-Switching Order* states:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching.... Our actions also should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic growth and the creation of new job opportunities. *In addition, these measures should increase access to diverse facilities, which could improve network reliability.*⁷

Disruption of these connections will lead Neutral Tandem's carrier customers to question Neutral Tandem's viability in the market. Removal of termination capability to a national CMRS carrier will clearly harm Neutral Tandem's customers, and will undoubtedly cause the loss of goodwill they have for Neutral Tandem.⁸ Verizon Wireless's ILEC affiliate has repeatedly stated that tandem exhaust is a serious problem, which should be solved through the establishment of direct connections for traffic levels necessitating a T-1 or larger capacity. Clearly, the disconnection of such direct connections carrying significant volumes of traffic is contrary to this policy, and would have the effect of disrupting Neutral Tandem's carrier customers' termination of calls to Verizon Wireless customers, and the usage of the PSTN at large. Such disconnection would also reduce the inherent redundancy built into the PSTN by Neutral Tandem, and would put the PSTN at greater risk (and longer recovery time) in the event of a network outage.⁹

Significantly, Neutral Tandem will suffer irreparable harm if Verizon Wireless disconnects those facilities already established between the Parties through the loss of goodwill and

⁷ See *Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II*, 9 FCC Rcd. 2718, ¶2 (rel. May 27, 1994) (emphasis added).

⁸ See Saboo Declaration, ¶¶ 37-41.

⁹ See Saboo Declaration, ¶¶ 9-10, 35.

interruption of customer relationships if Neutral Tandem's customers are forced to reroute their traffic—assuming there is capacity to do so—terminating with Verizon Wireless in these markets. This harm is “both certain and great; ... actual and not theoretical.”¹⁰

Both current and potential customers would be less likely to use Neutral Tandem's services in the future if traffic disruptions make the company appear less reliable. This type of harm to a business's relationship with its customers and to its reputation in the marketplace is recognized as irreparable by the courts. Numerous cases establish that “the loss of goodwill and potential loss of current and future customers can constitute irreparable harm,”¹¹ that loss of the ability to provide a unique product “almost inevitably creates irreparable damage to the good will of the distributor.”¹² Neutral Tandem is the first competitive tandem service provider in the United States. Neutral Tandem's loss of its ability to provide its unique service offering will result in:

- Higher tandem service rates among all communications service providers, including higher per minute transit charges, higher port charges and recurring fees;
- Loss of network redundancy resulting in tandem exhaustion and short-term call blocking;
- Increased homeland security risk through the loss of network redundancy; and
- Reduced network reliability, reduction of traffic transparency, and the loss of simpler network configurations.

Moreover, the harm to Neutral Tandem, its carrier customers, as well as to the PSTN at large would not be compensable after the fact. Although “economic loss does not, *in and of*

¹⁰ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

¹¹ *Independent Wireless One Corp. v. Charlotte*, 242 F. Supp. 2d 409, 416 (D. Vt. 2003) (citing *Tom Doherty Assocs., Inc. v. Saban Entm't*, 60 F.3d 27, 30 (2d Cir. 1995)).

¹² *Reuters Ltd. v. UPI*, 903 F.2d 904, 907-08 (2d Cir. 1990).

itself, constitute irreparable harm,”¹³ economic losses that would be unrecoverable after the fact can qualify as irreparable.¹⁴ In the absence of a Commission order, Verizon Wireless would have neither a contractual nor a statutory obligation to maintain the existing trunk circuits after termination of the MSA.¹⁵ Therefore, Neutral Tandem arguably would be unable to recover damages caused by the disconnection of the trunks.

Even where there is a possible damages remedy, the economic losses that result from the exclusion of the claimant from a profitable business relationship are so difficult to estimate that irreparable harm is established.¹⁶ Of course, when Neutral Tandem suffers such harm, it affects all of its carrier customers and the PSTN at large due to the loss of a strong, viable competitor to ILEC tandem services. As such, Neutral Tandem’s customers and the PSTN would also suffer irreparable harm.

Finally, Verizon Wireless’ actions seeking disconnection is especially disingenuous because they are contrary to the recent course of events between the parties. Even in the weeks just before the notice requesting disconnection, Verizon Wireless was leading Neutral Tandem to believe that Verizon Wireless was not going to terminate the relationship, but in fact expand it.

¹³ *Wisconsin Gas Co. v. FERC*, 758 F.2d at 674 (emphasis supplied).

¹⁴ *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996).

¹⁵ *AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002).

¹⁶ *Medicine Shoppe Int’l, Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 805 (8th Cir. 2003). *See also*, *e.g.*, *United States v. Bowman*, 341 F.3d 1228, 1237 (11th Cir. 2003) (“the harm that a business might suffer due to loss of goodwill after being prohibited from selling certain items available from competitors in neighboring towns pending a trial regarding the constitutionality of the ordinance proscribing the sale of the items was ‘irreparable’”); *United Healthcare Ins. Co. v. AdvancePCS*, 316 F.3d 737, 740-42 (8th Cir. 2002) (“Loss of intangible assets such as reputation and goodwill can constitute irreparable injury”); *Stuhlbarg Int’l. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001) (“Evidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm”); *Pappan Enters., Inc. v. Hardee’s Food Sys., Inc.*, 143 F.3d 800, 805 (3d Cir. 1998) (“Grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of goodwill”); *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511-12 (6th Cir. 1992) (competitive losses and losses of customer goodwill constitute irreparable harm).

Verizon Wireless maintained that it was “investigating” getting Neutral Tandem more capacity in Chicago, Detroit, and New York City up until the termination window closed on the MSA and Verizon Wireless actually recently started to send traffic through Neutral Tandem, again just weeks before issuing a letter informing Neutral Tandem that Verizon Wireless would be disconnecting the existing facilities.¹⁷

Neutral Tandem submits that Verizon Wireless acted in bad faith in this regard and issued the disconnection letter just days before the end of the contract termination window, thereby giving Neutral Tandem no chance to plan accordingly or seek an order from the FCC prior to the issuance of the disconnection letter. As such, Neutral Tandem respectfully requests that the Commission require Verizon Wireless to maintain the *status quo* with respect to the connections already established between the two Parties pending the resolution of Neutral Tandem’s Petition for Interconnection.

III. LACK OF SUBSTANTIAL HARM TO OTHER PARTIES

Under the third test, it must be established that an order preserving the *status quo* would not cause substantial harm to other interested parties. In this case, the only interested adverse party is Verizon Wireless. Neutral Tandem submits that the maintenance of the established direct connections between the two parties will not cause any harm to Verizon Wireless, as Neutral Tandem pays all costs related to establishment and use of these facilities, and imposes no charge on Verizon Wireless for delivery of terminating traffic to it. Indeed, the disruption, call blocking, unnecessary coordination and other costs caused by prematurely disconnecting these trunks would actually be the source of harm to Verizon Wireless. As such, Verizon Wireless will not be

¹⁷ See Saboo Declaration, ¶ 15.

harmful by maintaining those connections with Neutral Tandem pending the resolution of the Petition for Interconnection.

IV. PUBLIC INTEREST BENEFITS

Neutral Tandem respectfully submits that the interim order requested by this motion is in the public interest. The earlier discussion of irreparable injury principally addressed how failure to maintain the *status quo* would result in harm to Neutral Tandem and its carrier customers as well as the end users of those carriers' telecommunications services at large (*i.e.*, the general public). Injury to these end users would clearly be inimical to the public interest. The requirement that the agency "carefully balance the harms to the parties, is intended to ensure that the [agency] 'choose[s] the course of action that will minimize the costs of being mistaken.'"¹⁸ In other words, the public interest analysis depends heavily on weighing the degree of harm that would be suffered by Neutral Tandem, its carrier customers, and the general public that uses those carriers' services if the Commission fails to grant the relief requested as compared to the degree of harm that would be suffered by Verizon Wireless were the relief not granted.

The public interest in avoiding tandem exhaust also favors granting the relief requested by Neutral Tandem. Even Verizon Wireless's ILEC parent has stated that carriers should establish direct end office connections at levels which meet or exceed the DS1 threshold to prevent tandem exhaust.¹⁹ The Bureau expressly made this finding in the interconnection arbitration it conducted involving Verizon Communications in Virginia as requested by Verizon itself. Re-

¹⁸ *Scotts v. United Industries*, 315 F.3d 264, 284 (4th Cir. 2002), citing *American Hosp. Supply Corp.*, 780 F.2d at 593 (7th Cir.1986). See also *AT&T Corp. v. Ameritech Corporation*, 13 FCC Red. 14508 (1998).

¹⁹ See *Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for the Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Red. 27039, 27084-86 (Wireline Comp. Bur. 2002).

moving existing facilities aimed at reducing tandem exhaust would clearly violate this principle, and would significantly disrupt traffic to Verizon Wireless from Neutral Tandem, its carrier customers, and therefore the public at large.

In this case, the balance of equities and the public interest favor maintenance of the *status quo* between the Parties. In particular, when the prospect of irreparable harm weighs heavily in favor of the petitioner, as was the case in *Time Warner Cable*,²⁰ and is the case here, and because tandem competition, the reduction of tandem exhaust, and network redundancy are of significant public policy concern, the Commission should grant the limited relief requested by Neutral Tandem, and preserve the public's access to those facilities that aim to reduce the blockage of traffic.

CONCLUSION


As discussed above, Neutral Tandem has satisfied all four factors that are required to grant the motion. In the Petition for Interconnection, Neutral Tandem demonstrated that it will likely prevail on the merits. Failure to grant the motion would result in irreparable injury to Neutral Tandem and substantial harm to its carrier customers and their end user customers. Grant of the motion will not result in any harm to Verizon Wireless. Lastly, preservation of the *status quo* would serve the public interest.

WHEREFORE, Neutral Tandem respectfully requests that the Commission issue an interim order requiring Verizon Wireless to maintain the *status quo* concerning the already-established direct connections in Chicago, Detroit, and New York City, pending the ultimate resolution of Neutral Tandem's Petition for Interconnection in the above-reference matter. The

²⁰ MB Docket No. 06-151, Order, DA 06-1587, rel. August 3, 2006

interim order should apply only to trunks existing as of July 17, 2006, and should not require Verizon Wireless to permit installation of any new facilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell M. Blau", with a small "res" written to the right of the signature.

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Dated: August 17, 2006

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
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Petition of Neutral Tandem, Inc.)	
for Interconnection with Verizon)	Docket No. 06-159
Wireless, Inc. Pursuant to Sections)	
201(a) and 332(c)(1)(B) of the)	
Communications Act of 1934, as Amended)	
_____)	

DECLARATION OF SURENDRA SABOO

I. INTRODUCTION

1. My name is Surendra Saboo. I am over the age of 18 and competent to provide the testimony herein. I have personal knowledge of the facts set forth in this Declaration.

2. I am employed by Neutral Tandem, Inc. ("Neutral Tandem") as Chief Operating Officer and Executive Vice President. I have over 20 years of executive management experience in the telecommunications industry. I hold a B.S. degree in Mechanical Engineering, a masters in Industrial and Systems Engineering and a Ph.D in Operations Research. I have also completed the Advanced Management Program at Hawaii University.

3. This matter arises from a dispute between Neutral Tandem and Verizon Wireless concerning interconnection between the two parties. This Declaration is in support of Neutral Tandem's Motion for Interim Order to Preserve the *Status Quo* filed in the above docket. That motion seeks to require Verizon Wireless to maintain the direct connections already established between the two parties pending the resolution of the above-captioned matter.

4. The purpose of this Declaration is to explain why, in the absence of an interim order to preserve the *status quo*, Neutral Tandem will be immediately and irreparably harmed by the disconnection of existing trunk facilities between Neutral Tandem and Verizon Wireless. In

particular, I will describe the effects disconnection of the existing interconnection facilities would have on Neutral Tandem, Neutral Tandem's carrier customers, and the public switched telephone network ("PSTN") at large.

II. BACKGROUND ON NEUTRAL TANDEM

5. Neutral Tandem offers competitive tandem switching and transit services in over 40 LATAs nationwide. It is the industry's only independent tandem services provider, offering neutral intercarrier transit and tandem-switched access services between competitive carriers.¹

6. Among other services, Neutral Tandem provides CLECs, wireless carriers, and cable companies alternative means to interconnect and exchange traffic without using incumbent LEC transit and tandem-switched access services. Neutral Tandem provides service to, and/or has direct connections with, nearly every major CLEC, CMRS and cable provider.

7. As a general matter, every telecommunications carrier must interconnect directly or indirectly with every other carrier, both as a legal (47 USC § 251(a)(1)) and a practical matter, since it would be very difficult to market any kind of telecommunications service that did not allow calls to anyone regardless of which carrier serves them. Carriers can and sometimes do establish direct connections between their switches. In a geographic market served by a large number of carriers, however, the number of direct connections needed to connect all their switches grows exponentially faster than the number of carriers – for example, if there are four carriers with one switch each, it would take 12 trunk groups to connect them all; but if there are

¹ As noted in Neutral Tandem's Petition for Interconnection in the above-referenced docket, "transit" refers to the intermediary switching of local and other non-access traffic that originates and terminates on the networks of different telecommunications providers within a local calling area or MTA. "Tandem-switched access" refers to the routing of switched access, usually interLATA, traffic between the network of an interexchange provider or other service provider, on the one hand, and the end office of the originating or terminating local service provider, on the other.

eight carriers, it would take 56 trunk groups to connect each carrier to every other one. Therefore, carriers often prefer indirect interconnection through a tandem switch where the volume of traffic between a particular pair of switches is not large enough to justify the investment in direct trunks.

8. Until the entry of Neutral Tandem into this market segment, the only available method of indirect interconnection in virtually all local markets was the tandem switch operated by the incumbent LEC. Thus, for example, if a cellular carrier wished to terminate calls to customers served by a cable company, it either had to establish a direct trunk to the cable company's switch, or purchase tandem switching and transport from the ILEC. Neutral Tandem's entry provides these carriers a third option, connecting indirectly through Neutral Tandem's services at a competitive price to the LEC interconnections.

9. Competitive tandem switching inherently builds redundancy into the telecommunications sector and infrastructure, which, in turn, provides diversity, redundancy, efficiency, and increased reliability to the PSTN. This allows for faster disaster recovery and provides more robust homeland security.

10. Apart from the public benefits associated with competition in the tandem switching and transit service businesses and the increased redundancy for the PSTN, Neutral Tandem provides significant benefits to its carrier customers, including lower per minute transit charges, reduced port charges and nonrecurring fees, simpler network configurations, increased network reliability, improved quality of service and traffic transparency. Thus, through its competitive tandem switching and transit services, Neutral Tandem provides the traditional benefits of competition: lower cost, increased service, unique features, and neutrality. The availability of

Neutral Tandem's services, especially from a competitively-neutral provider, also helps level the playing field by increasing competitive carriers' leverage with ILECs.

11. As an integral part of providing intercarrier transit and tandem switched access services, Neutral Tandem establishes direct trunk connections, typically at DS3 or multiple DS3 capacities, between its customers and the carriers to whom they wish to terminate traffic.

III. NEUTRAL TANDEM'S DISPUTE WITH VERIZON WIRELESS

12. Neutral Tandem's dispute with Verizon Wireless grows out of Verizon Wireless' refusal to permit Neutral Tandem to install direct connections to Verizon Wireless switches in numerous areas of the country. As described in Neutral Tandem's Petition for Interconnection filed in this docket, Neutral Tandem first requested connections to allow it to terminate its customers' traffic to Verizon Wireless switches in February 2004, but was refused by Verizon Wireless. After Neutral Tandem sought mediation from Commission staff, Verizon Wireless approached Neutral Tandem to settle the matter and drafted an agreement to allow such terminations. Neutral Tandem signed a two-year Master Service Agreement ("MSA"), effective August 18, 2004, that permitted Neutral Tandem to establish terminating trunk connections to Verizon Wireless switches upon request.

13. Although Verizon Wireless ultimately breached its obligation to permit such connections in many instances, it did initially permit direct connections to some of its switches, which Neutral Tandem installed and is currently using to deliver its customers' local and access traffic to Verizon Wireless for termination in Chicago, Detroit, and New York City.

14. On or about July 17, 2006, Verizon Wireless notified Neutral Tandem that it was terminating the MSA, and directed Neutral Tandem to disconnect existing trunk circuits in Chicago, Detroit, and New York City within 90 days after termination.

15. In the weeks just before the notice requesting disconnection, Verizon Wireless was leading Neutral Tandem to believe that Verizon Wireless was not going to terminate the relationship, but in fact expand it. For example, in e-mails dated May 3 and 4, 2006 from Don Foss of Verizon Wireless to Frank Cefali of Neutral Tandem, Mr. Foss specifically discussed *sending* more mobile traffic through Neutral Tandem in Chicago. As confirmed in an e-mail dated May 3, 2006 from Mr. Foss to Mr. Cefali, Verizon Wireless actually started to send traffic through Neutral Tandem. Verizon Wireless also maintained that it was “investigating” securing Neutral Tandem more capacity up until the termination window closed on the MSA. In e-mails dated April 28, 2006 and May 5, 2006, Cindy Wells of Verizon Wireless informed Mr. Cefali that she would set up a meeting to discuss the next steps for New York. Indeed, on June 8, 2006, Ms. Wells informed Mr. Cefali that she would follow-up with him regarding augmenting trunks at one of the New York switches, and by e-mail dated June 12, 2006, Ms. Wells confirmed that she had a discussion scheduled with her New York staff—again just weeks before sending its July 17 letter informing Neutral Tandem that Verizon Wireless would be disconnecting the existing facilities.

16. On August 3, 2006, Neutral Tandem requested that Verizon Wireless voluntarily agree to a standstill arrangement with respect to the interconnected switches during the time that Neutral Tandem’s Petition for Interconnection is pending before the Commission. Verizon rejected Neutral Tandem’s request in a letter from counsel dated August 14, 2006 in which it reiterated Verizon Wireless’s earlier statement that Verizon Wireless would terminate all connections after a 90-day transition period.

**IV. CONSEQUENCES OF THE DISCONNECTION OF EXISTING FACILITIES
BETWEEN NEUTRAL TANDEM AND VERIZON WIRELESS**

**A. Disconnection Will Disrupt the Termination of Significant Levels of Traffic
to Verizon Wireless**

17. Failure to maintain the *status quo* between Neutral Tandem and Verizon Wireless pending the resolution of the Petition for Interconnection will cause irreparable injury to Neutral Tandem, to its customers, and to the PSTN at large.

18. The disruption of the successfully operating direct connections already in place between Neutral Tandem and Verizon Wireless will have the effect of blocking traffic terminating with Verizon Wireless from Neutral Tandem in the three affected markets as follows.

19. Neutral Tandem has approximately 20 carrier customers in the Chicago market utilizing approximately 80 switches, each of which routes traffic to Verizon Wireless.

20. Neutral Tandem typically routes approximately 40 million minutes of traffic, per month, in the Chicago market to Verizon Wireless. Neutral Tandem currently has approximately 160 DS1 trunks carrying traffic directly from its tandem switch to Verizon Wireless' Mobile Telephone Switching Office (MTSO) in Chicago.

21. Neutral Tandem has approximately 15 carrier customers in the Detroit market, each of whom also routes traffic to Verizon Wireless through Neutral Tandem.

22. Neutral Tandem typically terminates approximately 20 million minutes of traffic, per month, in the Detroit market to Verizon Wireless. Neutral Tandem currently has approximately 80 DS1 trunks carrying traffic directly from its tandem switch to Verizon Wireless' Mobile Telephone Switching Office (MTSO) in Detroit.

23. Neutral Tandem has approximately 10 carrier customers in the New York City, each of whom routes traffic to Verizon Wireless through Neutral Tandem.

24. Neutral Tandem typically routes approximately 1.5 million minutes of traffic, per month, in the New York City market. Neutral Tandem currently has approximately 10 DS1 trunks carrying traffic directly from its tandem switch to Verizon Wireless' Mobile Telephone Switching Office (MTSO) in New York. (The reasons the traffic in New York is much smaller than the level of traffic in the other markets is that Verizon Wireless refused to provide Neutral Tandem with additional capacity, despite repeated requests.)

25. If these direct connections to Verizon Wireless are removed, Neutral Tandem will have to route traffic destined for Verizon Wireless customers over an alternative route. Only one such alternative route exists—a trunk group between the Neutral Tandem switch and the ILEC tandem that serves the Verizon Wireless MTSO. Since wireless carriers typically subtend multiple ILEC tandems in large markets like New York, Chicago, and Detroit, in order to be able to assign telephone numbers to customers throughout a metropolitan area, many different trunk groups would be involved in carrying traffic to Verizon Wireless in the absence of a direct connection. Currently, these trunk groups are used only to handle overflow, in the event that Neutral Tandem's direct trunks are blocked due to unusually high traffic volumes.

26. Neutral Tandem would need the equivalent capacity of six DS3s in Chicago, for example, to a variety of specific ILEC tandems to handle the traffic currently being routed directly to Verizon Wireless. However, Neutral Tandem does not have such capacity today because ILEC interconnection agreements generally have provisions requiring the disconnection of trunks that fall below specified utilization percentages, which prevents Neutral Tandem from maintaining spare capacity that is not currently being used.

27. Therefore, either Neutral Tandem would need to order additional trunk groups to the ILEC tandems, or its carrier customers would need to augment their own trunk capacities to the

ILEC tandems to deliver traffic to Verizon Wireless. However, there is no assurance of the availability of capacity in the serving ILEC tandems for Neutral Tandem or its numerous carrier customers to compensate for this lost capacity. In addition, even if Neutral Tandem were able to augment its trunk capacity, Verizon Wireless may not have sufficient capacity to the ILEC tandem to receive the traffic by that route. Even now, several of our carrier customers have asked Neutral Tandem to accept overflow traffic to and from the LECs because many LEC tandems are exhausted, and the carrier customers already cannot obtain sufficient trunk capacity to the tandem designated in the LERG. For example, in several markets, including Chicago and Detroit, a major cable provider has requested that Neutral Tandem provide capacity to the ILEC tandems because it cannot secure sufficient capacity directly. Thus, our carriers are also unlikely to have the necessary excess capacity to absorb additional Verizon Wireless traffic. This capacity shortage could result in the blockage of traffic destined for termination to Verizon Wireless customers. In other words, some calls to Verizon Wireless users from customers of other carriers may be blocked and receive a fast busy signal due to lack of trunk capacity.

28. Such traffic blocking would have the effect of disrupting the communications of the PSTN, including all carriers and their subscribers that use Neutral Tandem to terminate traffic to Verizon Wireless customers in these markets.

29. Regional Bell Operating Companies ("RBOCs") have reported tandem exhaust in some of the tandem locations at issue. Specifically, in an e-mail dated August 15, 2006, from Steve Murphy at Verizon to Jon Clopton at Neutral Tandem, Verizon noted that tandem capacity was at issue in several New York tandems, including: NYCKNYWM25T, DRPKNYDP03T, NYCMNY3706T, BRWDNYBW01T, WHPLNYWP06T, NYCMNYBW21T, and NYCKNYWM12T. Further, in correspondence from SBC to wireless carriers, the following

Chicago-area tandems were reported to be exhausted: CHCGILWB12T, LGRCILLG50T and NBRKILNT52T.

30. As discussed earlier, disconnection of the direct connections between Neutral Tandem and Verizon Wireless will increase traffic to those tandems by millions, or in some cases tens of millions, of minutes per month. As such, exhaust in the above-referenced tandems will be significantly exacerbated by the disconnection of Neutral Tandem's direct connections with Verizon Wireless.

B. Disconnection Will Significantly Disrupt the Operations of Neutral Tandem's Carrier Customers

31. Should disconnection occur, Neutral Tandem's customers will be required to re-arrange their network routing in order to adjust for the loss of the affected direct connections. This will cause these customers, as well as Neutral Tandem, significant time and resources. This process can take up to 180 days if a co-location alternative point of termination ("APOT") augment is required, as it likely would be for the volumes of traffic involved here. In addition, this quantity of trunks will require a project status by the ILEC. One ILEC standard for these types of projects is seven T1s per month. Since Neutral Tandem would need over 160 T1s in Chicago alone to carry the terminating traffic of its carrier customers, establishing the necessary trunks could take as long as twenty-four months.

32. Upon current information and belief, Neutral Tandem's carrier customers are currently operating their ILEC tandem trunk groups at higher utilization rates than Neutral Tandem. In fact, as noted above, some carriers have requested that Neutral Tandem overflow traffic destined to the ILEC in situations where their tandem trunk groups are full. As such, Neutral Tandem's carrier customers will be significantly disrupted if the facilities between Neutral

Tandem and Verizon Wireless, used to terminate the traffic of Neutral Tandem's carrier customers, were shut down.

C. Disconnection Will Irreparably Harm the Only Viable Tandem Competitor in the United States, Resulting in a Loss of Benefits Such Competition Produces

33. The disconnection of Neutral Tandem's direct connections with Verizon Wireless will harm the development of the only viable tandem competitor in the United States: Neutral Tandem.

34. Neutral Tandem's loss in its ability to provide its unique service offering will mean that ILECs will once again be the monopoly providers of tandem service. This will result in higher tandem service rates among all communications service providers, which will reduce competitive options to all carriers as well as the ability of carriers to establish simpler network configurations.

35. Further, disruption to Neutral Tandem's ability to operate in the market will result in higher per minute transit charges, higher port charges and recurring fees. It will also lead to a loss of network redundancy resulting in tandem exhaustion and short-term call blocking, increased homeland security risk through the loss of network redundancy; and reduced network reliability.

36. The economic losses that would result from the exclusion of Neutral Tandem as a viable tandem services competitor to the ILEC are so difficult to estimate that it would be impracticable for us to seek monetary compensation for them, even if there were a legal remedy by which we could do so. Of course, when Neutral Tandem suffers such harm, it affects all of its carrier customers and the PSTN at large as a loss of a strong, viable competitor to ILEC tandem services. As such, Neutral Tandem's customers and the PSTN would also suffer irreparable harm.

D. Disconnection Will Injure the Goodwill and Business Reputation of Neutral Tandem

37. Disruption of the connections already established between Verizon Wireless and Neutral Tandem will undoubtedly lead Neutral Tandem's carrier customers to question Neutral Tandem's viability in the market. Removal of termination capability to Verizon Wireless, a national CMRS carrier, will clearly harm Neutral Tandem's customers, and will undoubtedly cause the loss of goodwill they have for Neutral Tandem.

38. Even with advanced notification up to 90 days, Neutral Tandem does not believe that this will allow its customers enough time to seek alternative service arrangements before disconnection of the connections between Neutral Tandem and Verizon Wireless.

39. Customers who have their service disrupted, including the need to re-arrange facilities because of the loss of terminations to Verizon Wireless, and, worse yet, the blocking of traffic, will certainly blame Neutral Tandem, not Verizon Wireless, for the inconvenience and expense they suffer from having their traffic destined for Verizon Wireless disrupted. Customers will perceive Neutral Tandem as unreliable and will undoubtedly share these opinions with other carriers and acquaintances in the telecommunications industry. This will impair Neutral Tandem's ability to attract new customers and retain its existing ones — even those who were not disrupted.

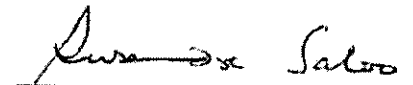
40. The resentment toward Neutral Tandem felt by these customers will not likely dissipate, even after the Commission's final decision on the principal issues in the above-captioned case. Rather, the perception created by the disruptions caused by Verizon Wireless's disconnection of these facilities will linger in the market long after the legality of Verizon Wireless's actions has been adjudicated.

41. It is highly unlikely that Neutral Tandem will later be able to convince customers to re-route traffic to Neutral Tandem's service at some future time after disconnection occurs. Customers disrupted by the loss of these connections will most likely believe that Neutral Tandem is an unreliable service provider due to their experience.

V. CONCLUSION

42. If Neutral Tandem's existing direct connections with Verizon Wireless are disconnected, Neutral Tandem will suffer irreparable harm to its business in the form of a significant loss of its customer base, loss of future revenue, inability to fulfill its contracts as a provider of transit services, loss of reputation and loss of the competitive opportunity. Further, such disconnection will irreparably harm Neutral Tandem's position as the provider of a unique competitive telecommunications service, which will have the effect of disrupting the termination of traffic to Verizon Wireless by its carrier customers, and a loss of benefits such competitive tandem service provides to the PSTN as a whole in the form of network redundancy, increased homeland security, lowering of tandem transit costs throughout the telecommunications industry, and the lowering of the barriers to entry for competitive telecommunications service providers.

I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Surendra Saboo
Chief Operating Officer and Executive Vice
President
Neutral Tandem, Inc.

Signed this th 17 day of August, 2006

Chicago, Illinois